IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
APPEAL FROM ORDER NO.521 OF 2005

Homi Patel @ Hormuzdyar
faredoon Patel & anr. Appellants

Vs.

Municipal Corporation of
Greater Bombay & ors. Respondents

Mr.P.K.Dhakephalkar with Mr.Sachin Dhakephalkar for appellants.

Mrs.Geeta Joglekar for respondent no.1.

CORAM: B.H.MARLAPALLE,J.
July 06, 2005.

ORAL ORDER:

1. This appeal arises from the order dated 9/10th March 2005 passed by the learned Judge of the City Civil Court at Mumbai rejecting the Notice of Motion No.4641 of 1999 taken out in S.C. Suit No.5652 of 1999. In the said suit the notice dated 3-9-1999 issued by the Ward Officer of the respondent no.1 - Corporation came to be challenged. Admittedly the said notice was issued under section 55 of the Maharashtra Regional Town Planning Act, 1966 ("MRTP Act" for short) and the notice was stayed by way of ad-interim order till the notice of motion came to be rejected and the appellant has been protected by the ad-interim orders passed by this court in the instant

appeal.

2. Mr.Dhakephalkar, the learned counsel for the appellants submitted that the Corporation was required, in law, to give an opportunity of hearing before it decided to demolish the suit structure on the count that it was unauthorised and obviously the principles of natural justice have been violated by the Corporation. He also submitted that the conclusions drawn by the trial Court after considering the documents submitted by the appellants are erroneous and in any case unless the Municipal Corporation hears the appellant, the proposed action of demolition cannot be undertaken. The reliance has been placed on a decision of the Division Bench of this Court in the case of Sopan Maruti Thopte & anr. v. Pune Municipal Corporation and anr. reported in **1996 (1) Mh.L.J. 963** and in para 19 of the said decision this Court has laid down certain guidelines to be followed before taking action under Section 351 of the Bombay Municipal Corporation Act, 1888 or under Section 260 of the Bombay Provincial Municipal Corporation Act, 1949.

3. The trial Court on assessment of the documents

as submitted by the appellants recorded that the plaintiffs did not produce the authorisation of the suit structure as well as the sanctioned plan. The suit structure did not reflect in the CTS plan and it was at no point of time considered as authorised by the BMC. As per the trial court the plaintiffs themselves could have submitted a reply to the notice challenged in the suit and without raising such a challenge the order / notice under section 55 of the MRTP Act would have a binding effect.

4. The scheme of section 55 read with section 52 of the MRTP Act contemplates summary proceedings but by providing 15 days for the noticee to take appropriate steps. The respondent-Corporation while dealing with the challenge raised against the notices issued under section 55 of the MRTP Act has consistently taken a stand before this Court that a period of 15 days is provided so that the noticee could approach the authority concerned and submit a representation in writing duly supported by the documents so that he is heard on such a representation in keeping with the principles of natural justice and thereafter the action for demolition would be considered. It is true that in

the instant case immediately on receipt of the notice dated 3-9-1999 the appellants approached the City Civil Court on or about 6-9-1999 and they did not submit any representation either to the Ward Officer or to the Asst. Municipal Commissioner in-charge of the concerned ward. If such a representation was submitted by the plaintiffs and if it was not entertained, there was a scope to agitate that the principles of natural justice were not followed. Once an order under the MRTP Act is passed, the bar of section 149 of the said Act operates in filing a civil suit in asmuchas such an order cannot be questioned in any suit or other legal proceedings.

5. Though the order impugned does not call for any interference, the fact remains that the notice dated 3-9-1999 could not be acted upon for the last about six years and it would be necessary that the appellants are given an opportunity to submit a written representation to the Asst. Municipal Commissioner of A-Ward along with the documents they may have in support of their contentions that the suit structure is not temporary unauthorised structure and the Asst. Commissioner may consider the said representation on its own merits.

6. In the result, the appeal is dismissed in limine. However, if the plaintiffs approach the Asst. Municipal Commissioner, A-Ward and submit a representation on or before 11th July 2005, they shall be given a hearing by the said Officer who in turn shall consider the representation on its own merits on or before 18th July 2005. The ad-interim order passed by this Court will continue to operate for a period of two weeks from today. It is made clear that the representation shall be decided without being influenced by any observations made in this order or the order passed by the Court below and the final decision shall be communicated to the appellants. If the representation is not submitted within the stipulated time, the ad-interim order

- shall cease to operate.

(B.H.MARLAPALLE,J.)